

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentees: Paul J. Carter and Hongxing Zhou
Patent No.: 7,638,606
Issue Date: December 29, 2009
Title: ANTIBODIES THAT BIND INTERLEUKIN-4 RECEPTOR
Docket No.: 3492-US-PCT

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER
37 C.F.R. § 1.705(d)**

Mail Stop - Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

After review of the file history and Image File Wrapper (IFW), Patentees hereby submit this Request for Reconsideration of Patent Term Adjustment (PTA) to correct the Office's PTA calculation of 240 days. The above-referenced patent issued on December 29, 2009, and therefore this application under 37 C.F.R. § 1.705(d) is timely filed within two months of the issue date.

1. This Request for Reconsideration is further to a request dated July 31, 2009, submitted in connection with the above-referenced Patent.
2. Patentees believe they are entitled to **446 days of PTA** under **35 U.S.C. § 154(b)(1)(A/B) and/or 37 CFR 1.702**. Patentees respectfully point out that the examination of the present application was not subject to any **37 CFR 1.702(b)** exclusions including, but not limited to, continuations, interferences, secrecy orders, appeal, or delays requested by the Applicant. This provision provides a one-day extension of patent term for every day that issuance of a patent is delayed due to enumerated prosecution delays by the Office (hereinafter, "prosecution delays"). Patentees' PTA calculation under **35 U.S.C. § 154(b)(1)(A)** is represented in Paragraph 6 below.
3. Patentees respectfully submit that, in light of recent proceedings regarding *Japan Tobacco Inc.*, Patentees are entitled to consideration of **235 days of PTA** under **35 U.S.C. § 154(b)(1)(B)**, for the Patent Office's failure to issue a patent within three years of its application filing date. During *Japan Tobacco Inc.*, the

CERTIFICATE OF EFS-Web TRANSMISSION

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted to the United States Patent and Trademark Office via EFS-Web on the date indicated below:

/Jac Cho/
Jac Cho

February 26, 2010
Date

Patent & Trademark Office admitted to incorrectly using the 371(c) date as an application filing date from which to calculate a Patent Term Extension instead of:

... the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a Patent within three years after the date ... the national stage commenced under 35 U.S.C. 371(b) or (f) [].

37 CFR 1.702(b). When determining if the present application was entitled to a PTA, the Patentees believe that the Office did not take into account the national stage entry date.

4. In particular, Patentees respectfully submits that the Office did not apply the proper standard for determining the period of “B delay” under **35 U.S.C. § 154(b)(1)(B)**. It is Patentees’ understanding that for purpose of calculating “B Delay,” the Office measured application pendency as beginning on March 5, 2007, the date on which the application fulfilled the requirements of **35 U.S.C. § 371**. Instead, the “B Delay” should have been calculated from three years after the national stage entry filing date (May 7, 2006).
5. Because **35 U.S.C. § 154(b)(1)(B)** and **37 CFR 1.702(b)** provide a one-day extension for every day greater than three years after the application filing date that it takes for a patent to issue (“issuance delay”) the **35 U.S.C. § 154(b)(1)(B)** PTA period includes May 8, 2009 (3 years and one day after national stage commencement) to December 29, 2009 (actual issue date), thereby encompassing 235 days.
6. The proper Patent Term Adjustment is the sum of “prosecution delays” and “issuance delays,” minus any overlap or Patentee delay. **MPEP 2731**. Thus, Patentees submits they are entitled to the sum of 240 days of “prosecution delay” and 235 days of “issuance delay,” minus 29 days of overlap, for a **total patent term adjustment of 446 days**.

Applicant’s PTA calculation is as follows:

Actions Under 35 U.S.C. § 154(b)(1)(A)		Delays		
Initial	Responsive	PTO	App	Over
05/07/2006 Filing Date	11/10/2008 Restriction Requirement	189		
11/10/2008 Restriction Requirement	12/09/2008 Response to Restriction Requirement		0	
12/09/2008 Response to Restriction Requirement	05/01/2009 Notice of Allowance	22		

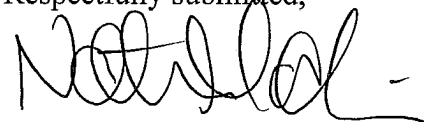
05/01/2009 Notice of Allowance	07/31/2009 Issue Fee Payment		0	
07/31/2009 Issue Fee Payment	12/29/2009 Issuance Date	29		
Actions Under 35 U.S.C. § 154(b)(1)(B)		PTO	App	Over
05/08/2009 3 Years from Filing Date	12/29/2009 Issuance Date	235		
Actions Under 35 U.S.C. § 154(b)(1)(A) and (B)		Delay & Overlap		
Totals	PTO Delays	475		
	Applicant Delays		0	
	Period of Overlap			29
	Patent Term Adjustment	446		

7. The present application is not subject to a terminal disclaimer.
8. Patentees believe that there are no circumstances under which exists a failure to engage in reasonable efforts to conclude processing and/or examination of this application.
9. Patentees hereby request that the Office correct the initial calculation of PTA to reflect **446 days**.

The \$200 petition fee prescribed by 37 CFR 1.18(e) is enclosed for this petition.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 09-0089.

Respectfully submitted,



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